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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

NICHOLAS COLACHIS et al., Plaintiffs and Appellants, v. KENNETH GRISWOLD et al., Defendants and Respondents.	B206091 (Los Angeles County Super. Ct. No. BC337396)

APPEAL from a judgment of the Superior Court of Los Angeles County, Edward A. Ferns, Judge. Affirmed.

Jim Colachis, in pro. per.; Nick Colachis, in pro. per.; David Burkenroad, Jim Colachis and Nick Colachis for Plaintiffs and Appellants.

Mitchell Silberberg & Knupp, Peter B. Gelblum, Stephanie Barber Hess and Todd E. Reese for Defendants and Respondents

I. INTRODUCTION

The parties were involved together in a night club venture. Their association ended when the plaintiffs sold their interests to the defendants. Plaintiffs, Nicholas Colachis (Nick),[1] James Colachis (Jim), and Colachis Consulting, appeal from a judgment confirming an arbitration award in favor of defendants, Kenneth Griswold (Kenneth), Tod Griswold (Tod), Mimi Kim Griswold (Mimi), Camino Palmero West, LLC, Hunter Global Ventures, LLC, and V3 Club Company, LLC (the club company). Plaintiffs contend it was error to compel them to arbitrate their claims. If not, plaintiffs assert the trial court erred in failing to correct the arbitration award to delete the attorney fee finding. We affirm the judgment.

II. BACKGROUND

Nick and Jim—the former owners and operators of a successful Los Angeles restaurant and night club, Vertigo—sought to open a new club in the Hollywood and Highland entertainment complex. As alleged in their complaint, beginning in or about January 2000, they invested time, energy, and money in pursuit of the project. They formed a company to construct, own, manage, and operate the club—the club company. Nick and Jim negotiated a lease on favorable terms. By February 2000, Nick had secured $1.3 million in commitments from investors.

In March 2000, however, Nick's "very close friend and confident," Kenneth offered to raise all the money needed for the project. Nick and Kenneth agreed that 50 percent of the interest in the club would be set aside for outside investors. They further

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[1] For purposes of clarity, and intending no disrespect, we refer to individuals who share a last name with others by their first names.

agreed the remaining 50 percent would be divided equally between them, with equal sharing of management duties and rights. Nick informed his investors their participation was no longer necessary. From that point forward, according to the complaint, Kenneth engaged in a pattern of conduct designed to wrest control and ownership of the club company away from plaintiffs. On October 15, 2001, the parties entered into an Amended and Restated Limited Liability Company Operating Agreement (the operating agreement). The operating agreement was signed by five corporate managers—Nick and Jim, Kenneth, Tod, and Mimi. Interests in the club were held by Tod, Hunter Global Ventures, of which Mimi was a general partner, Nick, and Colachis Consulting, of which Jim was a general partner. In April 2001, Kenneth and Nick signed the lease for space in the Hollywood and Highland entertainment complex. Defendants' misdeeds allegedly continued thereafter, including converting the club company assets to their personal use. Also, defendants allegedly lent money to the club company at usurious rates. Moreover, defendants allegedly usurped all management authority. They used that authority to withhold monthly management fees due to the managers. Ultimately, plaintiffs were forced to sell their interests in the club company.

On November 7, 2002, the parties entered into a Membership Interest Purchase Agreement (the purchase agreement). Nick and Colachis Consulting agreed to sell their 17 percent interest in the club company to Camino Palmero West, LLC. Kenneth signed the agreement as Manager of Camino Palmero West, LLC. Tod signed the agreement as a manager of the club company. Jim signed the agreement as general partner of Colachis Consulting and Nick signed on his own behalf. The Purchase Agreement contained an arbitration clause, paragraph 2.18: "**Mandatory Arbitration**. Any controversy or claim arising out of or relating to this Agreement, the enforcement or interpretation thereof, or because of an alleged breach, default or misrepresentation in connection with any of the provisions hereof, shall be submitted to arbitration, to be held in Los Angeles, California, in accordance with the American Arbitration Association Commercial Arbitration Rules. Any award rendered in such arbitration shall be final and binding upon the parties, and

judgment may be entered thereon in any court of competent jurisdiction. . . . This agreement to arbitrate shall be specifically enforceable."

Plaintiffs filed a July 29, 2005 complaint against defendants alleging: fiduciary duty breach; contract and implied covenant breach; conspiracy to defraud; fraud; negligent misrepresentation; violations of the Corporations Code; rescission; and violations of title 18 United Sates Code section 1962(d), which is part of the Racketeer Influenced and Corrupt Organizations Act. Plaintiffs sought damages and injunctive relief. Defendants filed a September 21, 2005 motion to compel arbitration. Defendants asserted: the gist of plaintiffs' complaint was that they were fraudulently coerced into selling their interests in the club company; the purchase by Camino Palmero West, LLC, was made pursuant to the purchase agreement; and the purchase agreement contained a very broad binding arbitration clause. Plaintiffs opposed the motion. They argued: the arbitration clause did not apply to claims against non-contracting defendants; the arbitration clause did not apply to any cause of action in the complaint; and the trial court had the power to keep these matters consolidated under Code of Civil Procedure section 1281.2, subdivision (c) to minimize the potential for contradictory judgments. On November 15, 2005, the trial court granted the motion to compel arbitration.

Following an arbitration award in their favor, defendants filed a petition to confirm the award. Also, plaintiffs filed a petition to correct the award. The trial court granted defendants' petition to confirm the award. Plaintiffs' petition to correct the award was denied. Judgment confirming the award was entered on February 7, 2008. This appeal followed.

III. DISCUSSION

A. Arbitration Was Properly Compelled

The first issue is whether the language of the arbitration clause encompasses the claims in plaintiffs' complaint. (*Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal.App.4th 227, 229; *Wolitarsky v. Blue Cross of California* (1997) 53 Cal.App.4th 338, 348.) We review the scope of the arbitration clause de novo. (*RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1522; *Coast Plaza Doctors Hosp. v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 684; *Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell, supra,* 76 Cal.App.4th at pp. 229-230.) We bear in mind the strong public policy in favor of arbitration. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 971-972; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) We resolve any doubt as to the scope of the arbitration clause in favor of ordering the parties to arbitrate. (*Moncharsh v. Heily & Blase, supra,* 3 Cal.4th at p. 9; *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 189.)

Plaintiffs argue their claims are not subject to arbitration because: their claims are based on the operating agreement; their claims are not based on the purchase agreement; and the parties did not intend that the purchase agreement would incorporate by reference claims related to the operating agreement. We disagree—the arbitration clause is so broad it covers the claims in the complaint. The arbitration clause at issue is very broad. It uses the language, "Any controversy or claim arising out of or relating to" the purchase agreement. (See *Prima Paint Corp. v. Flood & Conklin Mfg. Co.* (1967) 388 U.S. 395, 397-398, 406; *Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell, supra,* 76 Cal.App.4th at p. 230.) Therefore, the question before us is whether plaintiffs' claims *relate to* the purchase agreement.

A broad arbitration clause in a subsequent agreement between parties—such as in the case before us—may govern disputes arising under an earlier contract. (*Drews*

Distributing, Inc. v. Silicon Gaming, Inc. (4th Cir. 2001) 245 F.3d 347, 350-351; see Knight, Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2008) ¶ 5.215.4, p. 5-153 (rev. # 1, 2007).) In *Drews Distributing*, the United States Court of Appeals for the Fourth Circuit held contract and tort claims arising out of a letter agreement were arbitrable under an arbitration provision in a subsequently executed distributor agreement. The *Drews* court reasoned, "[T]he reach of an arbitration clause is not restricted to those causes of action brought under the contract containing the clause, unless the parties draft a clause so restricted in scope." (*Drews Distributing, Inc. v. Silicon Gaming, Inc.*, *supra*, 245 F.3d at p. 350; accord, *Branchville Machinery Co., Inc. v. AGCO Corporation* (E.D.Va. 2003) 252 F.Supp.2d 307, 310-311; *In re Betzold* (Bankr. N.D.Ill. 2004) 316 B.R. 906, 912.)

We agree with plaintiffs their complaint does not allege a breach of the purchase agreement. Nor does the complaint assert defendants otherwise failed to meet their obligations under the purchase agreement. We also agree that plaintiffs' causes of action could be maintained without reference to the purchase agreement. But the question is whether plaintiffs' claims *relate to* the purchase agreement, not whether they arise out of it or assert a breach of it. Here, as in *Drews Distributing*, it makes no difference whether some or all of plaintiffs' claims arose out of the operating agreement so long as they relate to the purchase agreement. (*Drews Distributing, Inc. v. Silicon Gaming, Inc.*, *supra*, 245 F.3d at p. 350; *Branchville Machinery Co., Inc. v. AGCO Corporation*, *supra*, 252 F.Supp.2d at pp. 310-311.) Moreover, all of plaintiffs' claims relate to the purchase agreement. The gist of the complaint, as characterized in the opening brief, is: defendants refused to release management fees; this caused plaintiffs financial stress; the failure to pay the management fees forced plaintiffs to sell their interests in the venture pursuant to the purchase agreement; and defendants' misconduct forced plaintiffs out of the business, which was consummated by the purchase agreement. Hence, plaintiffs' claims relate to the purchase agreement, under which the sale was consummated.

Plaintiffs take issue with the trial court's statement in its decision granting defendants' motion to compel arbitration that, "[T]he Purchase Agreement was intended to subsume and replace any rights the sellers had under the Operating Agreement." We are not concerned with the trial court's reasoning. As noted above, our review is de novo. (*Coast Plaza Doctors Hosp. v. Blue Cross of California*, *supra*, 83 Cal.App.4th at p. 684; *Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell, supra,* 76 Cal.App.4th at pp. 229-230.)

With respect to the parties who can be compelled to arbitrate, plaintiffs argue the defendants who did not sign the purchase agreement were not subject to the arbitration clause. Plaintiffs note, "[T]he Purchase Agreement specifically excluded third parties from benefitting from its terms . . . ." Paragraph 2.8 of the Purchase Agreement states: "No Third Party Beneficiaries. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party, except to the extent otherwise set forth herein." We review the proper party question for error as a matter of law. (See *Lovret v. Seyfarth* (1972) 22 Cal.App.3d 841, 859; *Unimart v. Superior Court* (1969) 1 Cal.App.3d 1039, 1045.) We conclude plaintiffs' argument is without merit.

The purchase agreement states it is made by and between Camino Palmero West, LLC, as buyer, and Nick and Colachis Consulting, as sellers. The purchase agreement is signed: by Camino Palmero West, the buyer, by Kenneth as manager; and by the club company, by Tod as a managing member. The only defendants who did not sign the purchase agreement at least in a representative capacity are Mimi and Hunter Global Ventures. The nonsignatories to the purchase agreement are sued as codefendants with Camino Palmero West, a party and a signatory to the contract, and the club company, a signatory to the purchase agreement. All defendants have an interest in the night club. Moreover, the five defendants joined in the motion to compel arbitration. The nonsignatory defendants thereby voluntarily submitted to arbitration together with their signatory codefendants, became parties to the arbitration, and are bound by the

arbitrator's award. (*Izzi v. Mesquite County Club* (1986) 186 Cal.App.3d 1309, 1319; *Lovret v. Seyfarth, supra,* 22 Cal.App.3d at p. 859; see *Westra v. Marcus & Millichap Real Estate Inv. Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 767; *Zakarian v. Bekov* (2002) 98 Cal.App.4th 316, 325-326.)

B. There Was No Error In Refusing To Correct The Arbitration Award

Plaintiffs argue the arbitrators should not have awarded defendants their attorney fees. Plaintiffs assert it was unfair to allow defendants to utilize the purchase agreement to compel arbitration and then rely on the operating agreement to recover attorney fees. Plaintiffs assert the arbitrators exceeded their powers by relying on the operating agreement to award attorney fees.

The arbitrators found that paragraph 13.15 of the operating agreement contained an attorney fee clause. The parties agree the purchase agreement contains an attorney fee clause. The promissory note that was executed along with the purchase agreement contains an attorney fee clause. Absent a limiting clause in the arbitration agreement itself, the merits of an arbitration award may not be reviewed for errors of law or fact except as provided in the California Arbitration Act. (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1339-1340; *Moncharsh v. Heily & Blase, supra,* 3 Cal.4th at p. 25.) Our Supreme Court has held: "When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that the arbitrator will have the power to decide any question of contract interpretation, historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision. (*Moshonov v. Walsh* [(2000)] 22 Cal.4th [771,] 775-777; *Advanced Micro Devices, Inc. v. Intel Corp.* [(1994)] 9 Cal.4th [362,] 372-375; *Moncharsh v. Heily & Blase, supra,* 3 Cal.4th at p. 28.) Inherent in that power is the possibility the arbitrator may err in deciding some aspect of the case. Arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law

or fact, and arbitral awards may not ordinarily be vacated because of such error, for '"[t]he arbitrator's resolution of these issues is what the parties bargained for in the arbitration agreement."' (*Moshonov v. Walsh, [supra*, 22 Cal.4th] at pp. 775-776, quoting *Moncharsh v. Heily & Blase,* [*supra,* 3 Cal.4th] at p. 28.)" (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1184.) Whether defendants should recover their attorney fees from plaintiffs was a question the arbitrators were empowered to decide. Their decision is not subject to our review on the grounds asserted.

IV. DISPOSITION

The judgment is affirmed. Defendants, Kenneth Griswold, Tod Griswold, Mimi Kim Griswold, Camino Palmero West, LLC, Hunter Global Ventures, LLC, and V3 Club Company, LLC, are to recover their costs on appeal jointly and severally from plaintiffs, Nicholas Colachis, James Colachis, and Colachis Consulting.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.